

NEW YORK STATE REAL ESTATE BOARD
MEETING SUMMARY

April 27, 2020

The meeting was held by the Department of State, Division of Licensing Services, via WebEx conferencing. A virtual meeting was held to comply with COVID-19 social distancing directives. Due to the fact that the meeting of the NYS Real Estate Board was held remotely, the public hearing section was held in abeyance.

I. CALL TO ORDER, INTRODUCTIONS and OFFICIAL ATTENDANCE

The meeting was called to order at 10:35 a.m. W. Clark performed roll call and D. Mossberg announced there was a quorum. The official attendance was as follows:

BOARD MEMBERS

Dale Burnett
Edwin Clark
David Dworkin
Sandra Erickson
Neil Garfinkel
Duncan MacKenzie
Trisha Ocona
Diane Ramirez
Raquel Vazquez

Excused:

Dherminder Bhasin
Gregory Weston

DEPARTMENT OF STATE STAFF

Whitney Clark
Amy Penzabene
Jodi DeLollo
David Mossberg
Ernita Gantt
Ernest Delaney
John Goldman
MaryJo Moore
Denise Tidings
Marcy Rose
Alison Lacy
Erin McCarthy
Paula O'Brien

VISITORS

The meeting was attended by several online public members.

- A. Approval of 12-16-19 Meeting Summary - W. Clark made a motion to approve the December 16, 2019 meeting summary. A second motion was made and all members were in favor; W. Clark announced that the meeting summary was approved.

II. ACTION ITEMS

- A. Enforcement Update – J. Goldman provided a report on enforcement issues. He reported on the ‘stay at home’ Executive Order issued in late March as it relates to the real estate industry. He explained that DOS has received numerous complaints on violations of this order. He mentioned that a few of the complaints were of offices being opened and staffed, but the majority of the complaints were of agents out showing properties, which is in violation of the order as all activity must be performed remotely. J. Goldman briefed the Board on a Newsday investigation report. He explained that in late November, Newsday published a story on brokerage activity on Long Island. They used hidden cameras to conduct their investigation and reported on what they described as a pattern of clear-cut discriminatory practice relating to how minorities versus white homebuyers were treated in terms of properties shown, etc. He mentioned that DOS was very concerned and studied the story before communicating with the subjects. Newsday conducted 34 different pair tests; DOS was concerned about 27 of the subjects. J. Goldman explained how enforcement staff triaged the cases with triage 1 being of the

most concern and 3 being of the least concern; 16 were determined to be triage 1. He discussed how enforcement staff began conducting in-person interviews with the agents and brokers of most concern; 11 of these 16 interviews have been conducted and referred to counsel for potential disciplinary action. The remainder of the investigations are pending with progress being slowed by the COVID-19 issue; enforcement staff will continue investigating the remaining cases in the order of concern.

D. Burnett asked DOS to elaborate on the investigative process and how DOS knows which cases could be considered discriminatory or prejudicial. W. Clark explained that there are three phases to the investigative process (evidence gathering, interview/collect documents, and prepare report for counsel). D. Mossberg stated that DOS has the benefit of working with the Human Rights Division (DHR) to conduct reviews; he explained that DOS obtains case law, history, and trial materials from DHR to aid us in gathering facts to determine if the actions are discriminatory. The cases that were referred to counsel's office are still being reviewed; D. Mossberg stated that differences in testers is clear in some of the cases, others are more challenging to establish a difference. He mentioned that once the reviews are complete, licensees will be informed of our determination and will go to hearing; the administrative judge will rule and fashion an appropriate remedy.

- B. Status of New CE Requirements** – A. Penzabene reported on an amendment to the Real Property Law that changes continuing education requirements for Real Estate licensees. She mentioned that the amendment was approved in October 2020 and will go into effect on July 1, 2021.

She stated that the amendment changes the course requirements for renewal and explained that all licensees will be required to complete 22.5 hours of approved education to include 2.5 hours of instruction pertaining to ethical business practices, and at least 1 hour of instruction pertaining to recent legal matters governing the practice of real estate brokers and salespersons in New York (may include statutes, laws, regulations, rules, codes, Department of State opinions and decisions, and court decisions). She mentioned that these required areas are in addition to 3 hours of fair housing and 1 hour of law of agency (2 hours within the two-year period immediately preceding a renewal).

She also stated that the amendment also removes the 15-year real estate broker continuing education exemption and now requires brokers who are currently exempted to complete continuing education starting July 1, 2021.

She mentioned that the date licensees will be required to meet the requirements will be based on their license expiration date; if the expiration date printed on the license is on or after July 1, 2021, the new requirements must be met. A Penzabene stated that the real estate schools were informed of the changes and are submitting courses that meet the new CE requirements. She clarified that the 22.5-hour CE requirement was not increased.

T. Ocona suggested that DOS consider utilizing a standard FH video put together by DOS and DHR to ensure that everyone receives the same training. W. Clark suggested that the Education Committee explore this idea.

- C. Regulations Update – D. Mossberg provided an update on the two regulations that the Board previously voted on to propose and take measures to adopt. He explained that the public comment period expired for both of these rules and stated that review of the public comments did not require any substantive changes to the rule. He provided information:

Rule #1 – FH regulations; the rule added a new 175.28, 175.29, and 177.9 to Title 19. On 4/21/20, a Notice of Adoption was filed. This rule required a new fair housing disclosure form to be provided to prospective clients upon the first substantive contact—the same standard that licensees are familiar with through the agency disclosure form. This form advises individuals of fair housing rules and where they may file a complaint; it must be maintained by the broker for a period of three years.

Rule #2 – FH notice to be predominantly posted in all broker offices and on websites being maintained by the brokerage. This rule also requires that this poster be posted at all open houses. It does not need to be presented at private real estate showings of property. This poster advises the public on examples of fair housing and where to go to file a complaint.

The last part of the proposal concerns places of instruction that provide the 3-hour FH course. D. Mossberg explained that the providers must ensure that instruction is audio and video recorded and maintained. He mentioned that the rules will be published in the 5/6/20 Register. D. Mossberg stated that these rules will go into effect on 6/20/20; DOS will send an email blast to licensees regarding the new requirements.

D. Mossberg stated that one non-substantive change was made to 175.29(e), concerning broker liability. He explained that in order to avoid confusion, this was deleted (and noted) as other sections address broker liability for violations.

He also reported on updates to real estate advertising. D. Mossberg mentioned that this regulation focused on internet advertising by brokers on third party websites. He explained that the Board proposed updates to the existing regulation and recommended that DOS adopt the regulation provided there were no substantive changes. On 4/21/20 a Notice of Adoption was filed to adopt the advertising update; no changes were made to the text and the final rule text as adopted will be published on 5/6/20 and will go into effect on 11/2/20. D. Mossberg explained that this timeframe allows the real estate industry time to comply with the new regulation; DOS is working on an advisory to send to licensees. D. Mossberg stated that this new regulation contains updated language that will clarify listing disclaimers, will be required when advertising on third party platforms, and must also be displayed on ‘thumbnail’ property pages as well.

III. NEW BUSINESS

- A. Executive Order Update – D. Mossberg provided the Board with a brief update on three Executive Orders that are related to the Board and their function:

202.7 – Allows for remote (electronic) notarizations; EO extended through 5/7/20.

202.11 – Extends expiration dates on license renewals for 30 days beyond expiration; EO extended through 5/7/20.

202.6 – Remote services (NY on Pause); EO extended through 5/15/20. Board members stated that they felt the industry needed further clarification on essential vs. non-essential services. W. Clark stated that we would attempt to obtain further clarification and provide it to licensees. She also invited members to provide us with best practices (recommended guidelines) for safely resuming real estate activities.

- B. Vice Chair Nomination and Election** – W. Clark explained that the statute allows the Board to elect a Vice Chair. She stated that board member D. MacKenzie expressed an interest in the vacant Vice Chair position and that he submitted a biography which was previously forwarded to all Board members for review. W. Clark asked for a motion. D. Ramirez made a motion to elect D. MacKenzie to the Board Vice Chair position; S. Erickson and D. Dworkin seconded the motion. All Board members were in favor; Whitney Clark announced that D. MacKenzie is the new Board Vice Chair.

IV. ADJOURNMENT

The Board was prompted by W. Clark to make a motion to adjourn the meeting; a motion was made to adjourn the meeting and was seconded by S. Erickson. The meeting was adjourned at 11:23 a.m.